IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 72 OF 2003.

Mr. Thomas Fernandes,
r/o House No. 396,
Majorda, Goa. ... Applicant.

Versus

1. State of Goa.
2. Police Inspector,
   Colva Police Station.
3. Mr. Francis Coelho,
   r/o Majorda, Goa. ... Respondents.

Mr. S.G. Dessai, Senior Advocate with Mr. Arun Bras de Sa, Advocate for the Applicant.

Mr. S.N. Sardessai, Public Prosecutor for the Respondents 1 and 2.

Mr. A.P. Lawande, Advocate for the Respondent No. 3.

Coram : P.V. HARDAS, J.

Date : 19th June 2003.

ORAL JUDGMENT.

The applicant/accused has filed this application under Section 482 of the Code of Criminal Procedure against the Order passed by the learned District and Sessions Judge, Margao, dated 3rd April 2003, in Criminal Miscellaneous Application No. 19 of 2003, cancelling the bail of the applicant/accused.

2. The facts as are necessary for the decision of this application may briefly be stated hereunder:-

The applicant/accused is facing trial for an offence punishable under Section 307 read with Section

34 of the Indian Penal Code. In connection with the said offence, the applicant/accused was arrested on 2nd March 2003. He was ordered to be released on bail, on 12th March 2003, as per the Order passed by the learned Sessions Judge on the condition that the applicant/accused would keep away from his village Majorda for the period of 30 days from the date of the Order. A condition was also imposed that he would establish his residence in the town of Margao and shall not directly or indirectly interfere with the witnesses. On 26th March 2003, an application was filed by the applicant/accused praying for modification of the condition and that he may be permitted to visit his village from 4th April 2003 onwards. On notice being issued to the respondent State on the application filed by the applicant/accused, a reply was filed by the State contending therein that the applicant/accused had breached the condition imposed on him while granting bail as within 10 days of his release he had visited his village Majorda. An apprehension was also expressed in the reply that there was a possibility of the applicant/accused threatening the witnesses. Meanwhile the first informant filed an application on 27th March 2003 seeking permission of the Sessions Judge for intervening in the application filed by the applicant/accused for modification of the condition. It appears that the first informant has also filed

affidavits of Francis Coelho and Hendriqueta Sequeira. He had also filed his own affidavit and that of his wife. The accused in order to rebut the allegation that he had breached the condition of the bail had also produced two affidavits, one of his wife and the other of one Kanaga Raj, the owner of Pentagon Bar and Restaurant.

3. The learned Sessions Judge, by the Order impugned in the present application, after discussing the rival contentions and the material produced by the respective parties, came to the conclusion that the accused had breached the condition of bail and, therefore, cancelled the bail, while dismissing the application filed by the applicant/accused for modification/relaxation of the condition.

4. I have heard Mr. Dessai, learned senior counsel for the applicant, Mr. Sardessai, learned Public Prosecutor for the State and Mr. Lawande, learned counsel for respondent no. 3/the first informant.

5. The Court granting bail undisputedly has the powers of suo motu cancelling the bail if it is brought to the notice of the Court that the accused, who has been granted bail, has breached the conditions of the

bail. In an application filed by the accused for modification of the conditions, the learned Sessions Judge undoubtedly had the powers to examine if the applicant/accused had committed a breach of the conditions and had the undoubted power to cancel the bail of the accused. However, the rules of natural justice require that before the bail of an accused is cancelled, he must be put to notice that his bail is likely to be cancelled. In the present case, no doubt the first informant had pleaded that the accused had committed breach of the condition of the bail and no doubt the accused had produced material to rebut the said charge, but, the fact remains that the accused was not put to notice that the Court was examining the material from the point of view of cancellation of bail. The Court at that time was only hearing the application filed by the applicant/accused for modification/relaxation of the condition.

6. I have perused the record and proceedings and, admittedly, the applicant/accused was not put to any notice regarding cancellation of his bail. No show cause notice appears to have been issued to the applicant/accused as to why his bail should not be cancelled. Bail of an accused cannot be cancelled unless he is put to notice. The learned trial Court was hearing the application for modification of condition

filed by the applicant/accused. The applicant/accused ought to have been put to notice or at least a show cause notice ought to have been issued. In view of this position, therefore, the Order impugned in the present application will have to be set aside. The learned Sessions Judge, therefore, shall decide the application of the applicant/accused for modification of the conditions afresh, which I have been told has been rendered infructuous as the condition was operating for a period of 30 days only, after giving a notice to the applicant/accused as to why his bail should not be cancelled.

7. Criminal Miscellaneous Application is allowed on the aforesaid terms. The impugned Order is, hereby, quashed and set aside and the matter is remitted to the learned Sessions Judge for deciding the same afresh in terms of what is stated above.

(P.V. HARDAS)
JUDGE.

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